



## **MINUTES**

**ENVIRONMENTAL QUALITY ADVISORY BOARD  
SPECIAL MEETING  
ESLO REVISIONS  
7506 E. Indian School Road  
Scottsdale, Arizona  
Tuesday, March 2, 2004  
2:00 p.m.**

**1) Call to Order**

The special meeting of the Environmental Quality Advisory Board was called to order at 2:10 p.m. by Dan Basinger, Board Chair. The presence of a quorum was noted.

**2) Roll Call**

Members Present: Dan Basinger, Chair  
Don Manthe, Vice Chair  
Michele Cohen  
Ron Hand  
Brian Munson  
Jay Spector

Members Absent: Randy Nussbaum

City Staff Present: Larry Person  
Al Ward  
Don Hadder, Sr.  
Randy Grant

Other Attendees: Lynn Lagarde, Earl, Curley & Lagarde  
Bill Schechter, Desert Mountain Properties

**3) Presentation and Discussion of Proposed ESLO Revisions**

Chair Basinger provided a brief history and outline of the ESLO process from May 27, 1998. He observed that ESLO has been agendized fifteen times since that date, and noted that the Environmental Quality Advisory Board has participated and provided input relative to the ESLO revisions throughout the process.

Mr. Grant expressed hope that he could obtain direction from the Board as to the revisions. He referred to a matrix of the proposed revisions and noted that City Council had requested review on seven issues. Mr. Grant stated that two additional issues would also be addressed due to questions that had arisen.

#### A. Wash Protection and Drainage

Mr. Grant stated that the recommendation was to maintain 50 csf as a threshold, noting that 50 csf was believed to be consistent with what 25 csf would accomplish south of the CAP. He added that the recommendation also included doing more in terms of identifying 50 csf washes through a mapping process to enhance the protection that would be afforded under that designation.

Mr. Grant stressed that NAOS would not be increased as a result of any of the revisions.

#### B. Walls

Mr. Grant noted three subsections to be considered.

- i. Ensure that walls don't disrupt or disconnect open spaces.

Mr. Grant stated that the recommendation was to allow walls to cross 50 csf washes with City Council approval when it could be demonstrated that it would not affect wash flows, visual corridors or the ability of wildlife to move.

- ii. Ensure that subdivision perimeter walls, when utilized, should be designed to accommodate incidental sheet flow of storm water and allow for connection of meaningful open spaces.

Mr. Grant stated that the recommendation was to allow subdivision perimeter walls, provided they are set back from the property line and specific design criteria regarding the walls are met. DR Board approval of perimeter walls as a separate review process would also be required.

iii. Individual lot walls on larger lots

Mr. Grant noted that the recommendation was to require individual lot walls to be set back from the property lines for R1-35 zoned lots and larger.

C. Construction/Building Envelopes

Mr. Grant explained that the goal was to limit construction disturbance, and that the recommendation was to limit the disturbance proportionally to the request being made.

D. Natural Area Open Space.

Mr. Grant noted that City Council had expressed a desire to ensure that NAOS was in the right place, and to examine how that was being determined. He explained that the goal was to end up with a connected series of open spaces rather than simply providing for open space on one property or another. He stated the recommendation was to create a series of maps that identify known environmental features, so that the most significant features can be protected, with emphasis on drainage corridors as the highest priority for NAOS.

E. Wildlife Corridors.

Mr. Grant stated that wildlife habitat and corridors could best be protected by efforts to maintain and minimize the disruption of washes.

F. Density Bonus

Mr. Grant explained the rationale for this item, noting that its use has been minimal. He stated that there was no change recommended, thus allowing it to remain as an incentive for dedication of more natural open space than the ordinance requires.

G. Boulder Protection

Mr. Grant noted the following:

- i. allow the property owner to incorporate smaller boulder features into development.
- ii. require that identification of smaller boulders than was required in previous ordinance and strengthen requirements for protecting them.

H. Building Heights

Mr. Grant presented two alternatives:

- i. Restrict new buildings in single-family residential districts to 24 feet in height, but allow nonresidential exemption if a hardship can be demonstrated.
- ii. Allow residential or non-residential property owner in Single-family zoning district to apply to City Council for additional height (up to 6' for 20% of the building footprint) based on hardship condition.

I. "Grand fathering Provisions"

Mr. Grant explained that the transition was made due to concern that the 2001 provisions were too broad. He went on to note compensation for master planned communities as an objective as well. He reviewed the alternatives listed on the matrix.

4.) Public Comment

Lynn Lagarde addressed the Board and advised the Board that she did not receive notice of the meeting until 9:30 a.m. She expressed appreciation for the extra meeting, however, asked that in the future, notice should be provided prior to the morning of the meeting. Chair Basinger stated that the meeting had been posted for five days, as required by law.

Ms. Lagarde stated her opinion that master planned communities that have developed over a 10-30 year time frame should be grand fathered as they were in the 2001 version, as the Hillside District was, when the first ESLO was passed. She acknowledged that the provisions presented were supportable with the exception of the 75 percent platting. She explained that infrastructure, and marketing lots for land that has been

platted begins early in the process for the master planned community. She stated that if the provision states that master planned communities were exempt, as they were approved under the prior versions of ESLO, there is no problem. She also noted that, should the 75 percent platting be approved, that enforcement was a big issue for exempt developers bringing their plans in to the city for approval.

Ms. Lagarde read from a letter from in-house council for Mirabel, dated April 10, 2001, stating that the letter outlined her concerns as well.

“The master plan currently under development is approved in their master plan approval included approval of their master NAOS plan, based on the existing ESLO regulations. The backbone infrastructure for the project, including all sites, road, water, and sewer has all been installed, or is in the final stages of construction. Initial grading of the golf course has been completed, two subdivision plats, only had been recorded at that time, a third was in the process. They had received their 404. They had a ten-acre mitigation area, and at this stage of approval and construction, vested rights have been established and Mirabel is entitled to complete this development of a master planned community as approved under existing regulations and reconfiguration of golf course and platted subdivisions may have serious financial consequences. They do not want to be in a position where they have to reconfigure anything within their master plan, and for this reason we are extremely concerned that to achieve certainty and the protection of Mirabel vested rights, an adequate grandfather provision must be provided.”

Discussion ensued as to the number of master planned communities that would be affected by the 75 percent provision. Board Member Spector stated that he was wrestling with the issue of what seemed to be changing the rules midstream. He noted that developers need to have some measure of certainty in the process in light of their land investments. He acknowledged that, at the same time, the city has a responsibility to protect the environment and natural areas, noting the delicate balance between environmental protection and economic development. Vice Chair Manthe observed that the majority of the changes would not affect plats of the master planned communities.

Bill Schechter, Desert Mountain Properties, spoke to the Board. He applauded the efforts of city staff and the Board. He also noted that restrictions for his community are even more stringent than the ESLO provisions. He stressed that his concern was that while most of the villages are platted, very few are 50 percent built out and probably would not be for years to come. An individual who builds a home is now subject to new rules, which in some cases, may result in a building envelope, which is subsequently unusable. He stated that lots are sold under a particular set of rules. If those rules are then changed and it impacts the buyer, and the developer is accused of misrepresentation by that buyer.

Board Member Munson questioned how much was to be gained by imposing the new ESLO revisions as far as the remaining properties that would be subject to the revisions.

Mr. Grant replied that the city has to ability to apply the ordinance widely or narrowly. He noted that a broad interpretation would of course impact more property owners who had purchased their land under previous ESLO provisions. More discussion followed as to the implications of the various alternative options listed on the matrix. Ms. Lagarde again referred to the problems associated with enforceability of exempting communities with a certain percentage of their parcels platted. She mentioned the potential cost to developers or homeowners while staff tries to figure out which portion of the ordinance applies to them. Chair Basinger observed that the ordinance was not designed to correct procedural problems; however, he was confident that staff would attempt to remedy problems in this area.

Vice Chair Manthe inquired as to public comment from Howard Myers regarding the revisions. Chair Basinger referred to a letter from Mr. Myers addressing his comments and suggestions.

*Mr. Myers' letter is attached as Exhibit B.*

Vice Chair Manthe made the following recommendations to the ordinance revisions:

1. Page 18 of 24: sentence beginning with Any walls allowed shall not enclose or disconnect contiguous NAOS or. Change the "or".
2. Page 12 Of 24 suggest rewording: the city has prepared high priority NAOS location maps.

Board Member Munson referred to the appearance at the previous regular meeting by representatives of the State Land Department and inquired if their concerns had been addressed. Mr. Grant replied that he

had been in contact with the State Land Department and would continue dialogue with them.

5.) Proposed EQAB Recommendation on ESLO Revisions

Vice Chair Manthe moved to prepare a letter to recommend to City Council the proposed changes and options to the ESLO revisions indicated by staff in red on the draft matrix. He further moved that the grand fathering provision would apply as of a date certain, April 17, 2004, to those master planned communities within which final plats have been approved for more than 25 percent of the master plan area. Chair Basinger asked to amend the motion to include a request that City Council leave ESLO alone for four years. Board Member Hand seconded the motion. The motion passed unanimously.

6) Adjournment

On motion duly made and seconded, the special meeting of the Environmental Quality Advisory Board was adjourned at 4:00 p.m.

Respectfully submitted,

Diane Swanberg  
Court Reporter